

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SCOTT KOLLER,

Plaintiff,

v.

MED FOODS, INC., et al.,

Defendants.

Case No. [14-cv-02400-RS](#)**ORDER DENYING MOTION TO LIFT
STAY**

In December of last year, this action was stayed pending decisions from the Ninth Circuit in *Jones v. ConAgra Foods*, No. 14-16327, *Brazil v. Dole Packaged Foods, LLC*, No. 14-17480, and *Kosta v. Del Monte Foods*, No. 15-16974. The stay order required plaintiff to file a notice upon the issuance of a decision on the merits in any of those three appeals, and indicated the Court would then lift the stay, continue it pending disposition of the remaining appeals, or solicit further briefing.

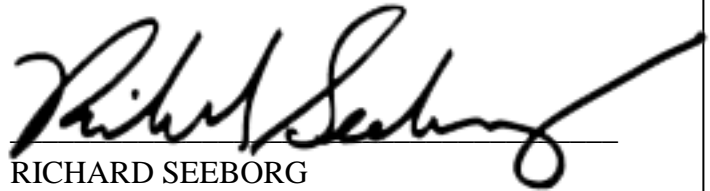
Prior to a decision issuing in any of those cases, plaintiff filed a motion to lift the stay arguing, (1) *Brazil* has been heard, and a decision is imminent; (2) a decision may soon issue in *Briseno v. ConAgra Foods, Inc.*, No. 15-55727 (9th Cir. filed May 13, 2015), which is a case plaintiff contends is even more likely to provide the guidance contemplated by the stay order, and; (3) circumstances exist suggesting both that decisions in *Jones* and *Kosta* may be substantially delayed and that those cases may ultimately be decided on procedural grounds not instructive here,

1 and; (4) recent district court decisions on class certification motions demonstrate that waiting for
2 further appellate guidance is unnecessary. After plaintiff's motion was filed, an unpublished
3 memorandum disposition has issued in *Brazil*. In essence, plaintiff's motion requests the Court to
4 decide it will not await decisions in *Jones* and/or *Kosta*, and instead to rule now that the stay will
5 be lifted upon issuance of a decision in *Briseno*, with defendants' opposition to class certification
6 to be due two weeks thereafter.

7 The motion is denied. Plaintiff may file notice when any decision in *Briseno* is filed. At
8 that juncture, an order lifting the stay, or continuing the stay, as may appear appropriate, will
9 issue. Any order lifting the stay will address the issues of whether plaintiff should supplement the
10 class certification briefing and how much time defendants should be allowed for filing opposition.
11 The parties' views on those issues will be solicited at that point in time, if necessary. Defendants
12 are advised that while it is unlikely that they will be ordered to file opposition in as little as two
13 weeks, a time period substantially longer than that will not be allowed unless further briefing in
14 support of the motion is requested from plaintiff.

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16 **IT IS SO ORDERED.**

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18 Dated: November 3, 2016

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21 RICHARD SEEBORG
22 United States District Judge
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